

## Refugee status determination and local integration of asylum seekers and refugees on the basis of sexual orientation in Brazil and Spain

Article (Published Version)

Andrade, Vítor Lopes (2018) Refugee status determination and local integration of asylum seekers and refugees on the basis of sexual orientation in Brazil and Spain. *GenIUS - Rivista di studi giuridici sull'orientamento sessuale e l'identità di genere*, 5 (2). pp. 88-103. ISSN 2384-9495

This version is available from Sussex Research Online: <http://sro.sussex.ac.uk/id/eprint/80555/>

This document is made available in accordance with publisher policies and may differ from the published version or from the version of record. If you wish to cite this item you are advised to consult the publisher's version. Please see the URL above for details on accessing the published version.

### **Copyright and reuse:**

Sussex Research Online is a digital repository of the research output of the University.

Copyright and all moral rights to the version of the paper presented here belong to the individual author(s) and/or other copyright owners. To the extent reasonable and practicable, the material made available in SRO has been checked for eligibility before being made available.

Copies of full text items generally can be reproduced, displayed or performed and given to third parties in any format or medium for personal research or study, educational, or not-for-profit purposes without prior permission or charge, provided that the authors, title and full bibliographic details are credited, a hyperlink and/or URL is given for the original metadata page and the content is not changed in any way.

# GenIUS

RIVISTA DI STUDI GIURIDICI  
SULL'ORIENTAMENTO SESSUALE E L'IDENTITÀ DI GENERE

PUBBLICAZIONE TELEMATICA SEMESTRALE REGISTRATA TRIB. BOLOGNA · ISSN 2384-9495 · NOVEMBRE 2018

2018/2

**Direzione scientifica**

Daniel Borrillo, Gilda Ferrando, *Stefano Rodotà*, Robert Wintemute

**Direzione editoriale**

Marco Gattuso, Barbara Pezzini, Paolo Veronesi

**Redazione**

*Diritto Internazionale*: Giacomo Biagioni, Adriana Di Stefano, Luca Paladini, Pietro Pustorino, Chiara Ragni, Livio Scaffidi, Roberto Virzo, Chiara Vitucci

*Diritto dell'Unione Europea*: Elisabetta Bergamini, Carmelo Danisi, Daniele Gallo, Alexander Schuster

*Diritto Costituzionale*: Iliara Rivera, Francesco Saitto, Angioletta Sperti, Giacomo Viggiani

*Identità di genere*: Roberta Dameno

*Diritto Penale*: Luciana Goisis, Luca Morassutto, Marco Pelissero

*Diritto Privato*: Stefano Celentano, Ines Corti, Leonardo Lenti, Guido Noto La Diega, Giuseppina Palmeri, Stefania Stefanelli, Anna Maria Tonioni, Monica Velletti

*Diritto Comparato*: Denise Amram, Michele Di Bari, Francesca Brunetta d'Usseaux, Elena Falletti, Anna Maria Lecis Coccu Ortu, Mathias Moschel, Angelo Schillaci, Matteo Winkler

*Diritto del Lavoro*: Carla Ponterio, Laura Tomasi, Tiziana Vettor

**Referees**

Emanuela Abbatecola, Rosalba Alessi, Esther Arroyo Amayuelas, Chris Ashford, Marzia Barbera, Vittoria Barsotti, Maria Caterina Baruffi, Roberto Bin, Nerina Boschiero, Giuditta Brunelli, Frances Burton, Ruggiero Cafari Panico, Carlo Casonato, Massimo Cavino, Eleonora Ceccherini, Paolo Cendon, Nicola Cipriani, Roberta Clerici, Giovanni Comandé, Marco Cuniberti, Marilisa D'Amico, Marcella Distefano, Massimo Dogliotti, Emilio Dolcini, Ascensión Elvira Perales, Carla Facchini, Carla Faralli, Vincenzo Ferrari, Arianna Fusaro, Alfredo Galasso, Orsetta Giolo, Victor Luis Gutiérrez Castillo, Francesca Ippolito, Silvia Marino, Francesco Munari, Gaetano Natullo, Silvia Niccolai, Fernanda Nicola, Rosanna Pane, Luigi Pannarale, Baldassare Pastore, Marco Pelissero, Mario Perini, Tamar Pitch, Salvatore Patti, Alessandra Pioggia, Antonio Prunas, Roberto Pucella, Andrea Pugiotto, Roberto Romboli, Giulia Rossolillo, Francesco Salerno, Amedeo Santosuosso, Scott Titshaw, Roberto Toniatti, Elena Urso, Maria Carmela Venuti, Filippo Viglione, Alessandra Viviani, Chiara Volpato, Danaya C. Wright, Andreas R. Ziegler

Registrazione presso il Tribunale di Bologna del 30/4/2014 n. Rgvv 2023 n. 4089/14 cron.

Codice ISSN 2384-9495

Direttore responsabile: Beppe Ramina

Impaginazione: Samuele Cavadini

GenIUS, Bologna 40123, via IV Novembre 7  
[genius@articolo29.it](mailto:genius@articolo29.it)

# Sommario

## Focus: Protezione internazionale e SOGI

*a cura di Carmelo Danisi*

- 6 **Carmelo Danisi:** Introduzione: Navigating Troubled Waters: Sexual Orientation and Gender Identity Asylum Claims in a Time of 'Crises' and Reforms
- 9 **Carmelo Danisi:** What 'Safe Harbours' are There for People Seeking International Protection on Sexual Orientation and Gender Identity Grounds? A Human Rights Reading of International Law of the Sea and Refugee Law
- 25 **Nuno Ferreira:** Reforming the Common European Asylum System: Enough Rainbow for Queer Asylum Seekers?
- 43 **Patrizia Palermo:** Orientamento sessuale e identità di genere nel sistema dell'asilo in Italia anche alla luce della riforma Minniti
- 59 **Adele Del Guercio:** Quali garanzie per il diritto all'unità familiare dei richiedenti e dei beneficiari di protezione internazionale con coniuge/partner dello stesso sesso?
- 74 **Moirá Dustin, Nina Held:** In or out? A Queer Intersectional Approach to 'Particular Social Group' Membership and Credibility in SOGI asylum claims in Germany and the UK
- 88 **Vítor Lopes Andrade:** Refugee Status Determination and Local Integration of Asylum Seekers and Refugees on the Basis of Sexual Orientation in Brazil and Spain

## Interventi

- 105 **Baldassare Pastore:** Soggetti vulnerabili, orientamento sessuale, eguaglianza: note sulla logica di sviluppo del diritto
- 113 **Angioletta Sperti:** Le parole contano. Alcune riflessioni sul "word ban" dell'amministrazione Trump

## Commenti

- 125 **Francesca Brunetta d'Usseaux, Daniele Ferrari:** La condizione intersessuale dalla "normalizzazione" alla dignità? Linee di tendenza dal diritto internazionale alla Corte costituzionale tedesca
- 138 **Alessandra Lang:** Il mancato riconoscimento del matrimonio tra persone dello stesso sesso come ostacolo alla libera circolazione delle persone nell'Unione: il caso *Coman*



## Osservatorio documenti

*a cura di Marco Gattuso*

152 *Garante della Privacy*: Provvedimento n. 476 del 31 ottobre 2018

## Osservatorio decisioni

*a cura di Marco Gattuso*

156 *Corte di appello di Napoli, sezione per i minorenni*: Sentenza del 15 giugno 2018

168 *Tribunale di Bologna*: Decreto del 6 luglio 2018

177 *Tribunale di Pistoia*: Decreto del 5 luglio 2018

183 *Tribunale di Trento*: Ordinanza del 31 luglio 2018

200 *Corte di giustizia dell'Unione europea*: Sentenza del 5 giugno 2018

---

*Focus*

*Protezione internazionale e SOGI*

Vitor Lopes Andrade\*

# Refugee Status Determination and Local Integration of Asylum Seekers and Refugees on the Basis of Sexual Orientation in Brazil and Spain

## Summary

1. Introduction. – 2. Refugee Status Determination in Brazil and Spain. – 2.1 Brazil. – 2.2. Spain. – 3. Local integration: strategies in Brazil and Spain. – 3.1 Experiences from São Paulo, Brazil. – 3.2 Accounts from Valencia, Spain. – 4. Conclusion.

## Abstract

Nonostante i primi casi in cui è stato garantito l'asilo per motivi legati all'orientamento sessuale risalgono agli anni Ottanta, la maggior parte delle ricerche in questo ambito sono emerse a partire dal 2010. Molte di queste si sono concentrate su questioni relative alla determinazione dello status di rifugiato, tralasciando il tema dell'integrazione a livello locale. Per questa ragione, se escludiamo gli studi sulla determinazione dello status nei Paesi europei, vi è una mancanza di studi in prospettiva comparata sul tema. Questo contributo cerca quindi, per la prima volta, di esplorare la questione dell'asilo in ragione dell'orientamento sessuale adottando una prospettiva Nord-Sud (del mondo), analizzando sia la determinazione dello status sia l'integrazione a livello locale in Brasile e Spagna.

*Despite the fact that the first cases of asylum granted for reasons of sexual orientation date back to the 1980s, most research on this issue began to emerge only in 2010. Most of this literature is about Refugee Status Determination (RSD) and does not approach the process of local integration. There is a lack of comparative studies among different States, with the exception of the ones relating to RSD in European countries. This paper is therefore a first attempt at approaching asylum based on sexual orientation in a North-South perspective, analysing RSD and local integration in Brazil and Spain.*

## 1. Introduction

Beginning in the 1980s, some countries have started to consider granting asylum to persons fearing persecution on account of their sexual orientation<sup>1</sup>, resorting to the 1951 Geneva Convention grounds for 'membership of a particular social group'.

\* PhD student, University of Sussex, V.Andrade@sussex.ac.uk.  
Contributo sottoposto a referaggio a doppio cieco.

1 The first country to recognize sexual orientation as relevant for finding persecution was the Netherlands, in Afdeling rechtspraak van de Raad van State (Judicial Division of the Council of State), 13 August 1981, *Rechtspraak Vreemdelingenrecht* 1981, 5, *Gids Vreemdelingenrecht* (oud) D12-51. See S. Jansen, T. Spijkerboer, *Fleeing Homophobia. Asylum Claims Related to Sexual Orientation and Gender Identity in Europe*, Amsterdam, Vrije Universiteit Amsterdam, 2011, p. 19.

There are almost 75 States where consenting same-sex sexual activity between adults is currently criminalised<sup>2</sup>. Apart from these countries there are others where, despite the fact that homosexuality is not legally criminalised, those who do not conform to what is considered 'standard' heterosexual behaviour suffer prejudice and discrimination from their own families, in their workplace and from the wider society. Consequently, an alternative is to flee to another State where it is believed that there is more sexual and affective freedom and it is possible to claim international protection.

Although the first cases date back to the end of the 1980s and beginning of the 1990s, academic research and reports from civil society on sexual orientation-based asylum claims have begun to emerge only in 2010<sup>3</sup> and are now increasing.

Relating to the thematic perspectives, as Venturi<sup>4</sup> has highlighted, most of the literature is about Refugee Status Determination (RSD). There are academic studies<sup>5</sup>, reports from civil society<sup>6</sup>, the documents of the United Nations High Commissioner for Refugees (UNHCR), and other work, which approach different legal and judicial aspects of the recognition of asylum to persons who claim to have faced persecution or have the well-founded fear of being persecuted because of sexual orientation in their country of origin.

Nevertheless, there is a shortage of work concerning the local integration of refugees and asylum seekers who are claiming international protection on the grounds of sexual orientation, or research that focuses on the social reality that they face in host countries. For instance, are asylum seekers/refugees who identify themselves as gay, lesbian or bisexual<sup>7</sup> discriminated against in the host countries? How do their heterosexual fellow citizens deal with them? Do they establish close relationships with the local LGBTI+ community? A few reports from civil society approach these questions<sup>8</sup>.

Relating to the methodological perspectives, there are few comparative studies among different States. The comparative works – which approach RSD as well – are limited to European countries<sup>9</sup>. There is a lack of research that comparatively analyses countries from the Global North with the Global South, concerning both RSD and social aspects.

Having these considerations in mind, this paper is a first attempt to analyse and to compare RSD/ and local integration of non-heterosexual asylum seekers and refugees from a North-South perspective, drawing examples from Brazil and Spain.

- 2 ILGA (International Lesbian, Gay, Bisexual, Trans and Intersex Association), *State-sponsored Homophobia. A World Survey of Sexual Orientation Laws: Criminalisation, Protection and Recognition*, 2017.
- 3 One of the first comprehensive works was S. Jansen, T. Spijkerboer, *Fleeing Homophobia*, *ivi*. This report approaches the Refugee Status Determination (RSD) in European countries.
- 4 D. Venturi, *Reflections on Empirical Research with LGBTI Refugees – A Legal Scholar's Perspective*, in *Oxford Monitor of Forced Migration*, 2017, p. 20.
- 5 T. Oliva, *Minorias Sexuais enquanto 'Grupo Social' e o Reconhecimento do Status de Refugiado no Brasil*, Brasília, UNHCR Brasil, 2012; L. Jubilit, *O Direito Internacional dos Refugiados e sua Aplicação no Ordenamento Jurídico Brasileiro*, São Paulo, Editora Método, 2007; N. Ferreira, *Portuguese Refugee Law in the European Context: The Case of Sexuality-based Claims*, in *International Journal of Refugee Law*, 2015; M. Dustin, N. Ferreira, *Canada's Guideline 9: Improving SOGIE Claims Assessment?*, in *Forced Migration Review*, 2017; N. Held, *What Does a 'Genuine Lesbian' Look Like? Intersections of Sexuality and 'Race' in Manchester's Gay Village and in the UK Asylum System*, in *Sexuality, Citizenship and Belonging: Trans-national and Intersectional Perspectives*, F. Stella, Y. Taylor, T. Reynolds, A. Rogers (eds.), London, Routledge, 2016; S. Arnold, *Nexus with a Convention Ground: The Particular Social Group and Sexual Minority Refugees in Ireland and the United Kingdom*, in *Irish Law Journal*, 2012; J. Díaz Lafuente, *Asilo y Refugio por Motivos de Orientación Sexual e Identidad de Género*, Madrid, Cuadernos del Congreso de los Diputados 14, 2016.
- 6 ILGA Europe, *Good Practices related to LGBTI Asylum Applicants in Europe*, 2014; UK Lesbian & Gay Immigration Group (UK-LGIG), *Failing the Grade. Home Office Initial Decisions on Lesbian and Gay Claims for Asylum*, 2010; Ead., *Missing the Mark. Decision-making on Lesbian, Gay (Bisexual, Trans and Intersex) Asylum Claims*, 2013; Stonewall, *No Going Back. Lesbian and Gay People and the Asylum System*, 2010.
- 7 Individuals may be persecuted, and therefore claim for asylum, due to their actual or perceived sexual orientation. The focus of this paper is on asylum seekers and refugees who identify themselves as lesbian/gay/bisexual or who do not use these LGB categories to identify themselves but have affective desires and/or sexual practices with same-sex people.
- 8 HIAS, *Triple Jeopardy: Protecting at-Risk Refugee Survivors of Sexual and Gender-based Violence*, 2012; People Against Suffering Oppression and Poverty (PASSOP), *LGBTI Refugee Support and Advocacy Project*, 2012; Metropolitan Support Trust, *Over not Out. The Housing and Homelessness Issues Specific to Lesbian, Gay, Bisexual and Transgender Asylum Seekers*, 2009; Micro Rainbow International, *Poverty, Sexual Orientation and Refugees in the UK*, 2013; Equipping Professionals for Supporting LGBT Refugees – EPSILON project, *Supporting and Including LGBTI Migrants: Needs, Experiences & Good Practices*, 2017.
- 9 ILGA Europe, *Good Practices*, *ivi*; S. Jansen, T. Spijkerboer, *Fleeing Homophobia*, *ivi*.

While RSD clearly identifies a process experienced by non-heterosexual claimants, the concept of local integration is still controversial since it is associated with more than one meaning<sup>10</sup>. Many authors agree that local integration must be understood as a two-way process involving not only the asylum seekers and refugees, but also the host society<sup>11</sup>.

Integration means, therefore, the process that develops from the moment the asylum seeker or refugee starts to interact in a new context, in the host country, with the receiving society<sup>12</sup>. It is not a synonym for assimilation; it means intercultural dialogue. The process of integration requires adaptation on the part of the newcomers (that is not to say that they need to lose their own cultural manifestations, identities and values, but that they begin to incorporate other ones in the host country) and adaptation on the part of the host society, which requires an effort from the locals to understand the 'Other'. In this sense, discrimination, xenophobia, racism and homophobia towards asylum seekers and refugees in the host society are obstacles to an effective local integration.

Different items may be analysed concerning local integration, such as housing, employment, access to educational and health services, etc. For the purpose of this paper, the focus will be placed on the relation between non-heterosexual asylum seekers/refugees and the local LGBTI+ community. The (lack of) partnerships among NGOs that work for refugees' assistance and LGBTI+ organizations, as well as the consequences for non-heterosexual applicants, are investigated.

Coming to the countries on which this paper focuses, Brazil was not considered a traditional 'country of asylum' because of the low number of claims. This reality seems to have changed in 2013, when the country received more than 17,000 asylum seekers. While in 2014 and in 2015 Brazil received 28,000 claims per year, in 2017 it reached the highest number of applications amounting to 33,866 claims<sup>13</sup>. According to Brazilian authorities and NGOs, the number of claims based on sexual orientation has recently been increasing<sup>14</sup>. However, official data about these claims are not published<sup>15</sup>.

Spain, in turn, is not known as a traditional 'country of asylum'. The number of claims is low comparing to other European Union (EU) Member States, but it has been increasing recently. In 2017, it reached the highest rate: 30,400 claims<sup>16</sup>. The extremely low percentage of applicants who are granted refugee status and the policy of increasing control over its external boundaries seem to have discouraged many asylum seekers from claiming international protection in Spain for many years<sup>17</sup>. Nevertheless, concerning non-heterosexual asylum seekers, Spain has been a desirable destination<sup>18</sup>. Like in Brazil, official data about claims based on sexual orientation are not published<sup>19</sup>.

10 S. Castles, M. Korac, E. Vasta, S. Vertovec, *Integration: Mapping the Field*, London, Home Office Immigration Research and Statistics Service, 2002; J. Crisp, *The Local Integration and Local Settlement of Refugees: A Conceptual and Historical Analysis*, in *New Issues in Refugee Research*, Geneva, UNHCR, 2004; A. Ager, A. Strang, *Understanding Integration: A Conceptual Framework*, in *Journal of Refugee Studies*, 2008.

11 *Ibid.*; J. Moreira, *Refugiados no Brasil: Reflexões Acerca do Processo de Integração Local*, in *Revista Interdisciplinar da Mobilidade Humana*, 2014.

12 J. Moreira, *Refugiados no Brasil*, *ivi*.

13 Comitê Nacional para os Refugiados (CONARE), *Refúgio em Números – 3ª Edição*, 2018, at [www.justica.gov.br/news/de-10-1-mil-refugiados-apos-5-1-mil-continuam-no-brasil/refugio-em-numeros\\_1104.pdf](http://www.justica.gov.br/news/de-10-1-mil-refugiados-apos-5-1-mil-continuam-no-brasil/refugio-em-numeros_1104.pdf).

14 Even with a homophobic society, Brazil provides a better environment for non-heterosexual asylum seekers and refugees when compared to their countries of origin (e.g. Nigeria, Cameroon, Sierra Leone). For example, same-sex marriage is legal in the country and the biggest Pride in the world is held in São Paulo. Furthermore, the Brazilian Asylum Act is considered very progressive (it is possible to work legally as an asylum seeker, for instance). For a discussion about Brazil as a host country for non-heterosexual asylum seekers and refugees, see V. Andrade, *Imigração e Sexualidade: Solicitantes de Refúgio, Refugiados e Refugiadas por Motivos de Orientação Sexual na Cidade de São Paulo*, Master's Thesis, Universidade Federal de Santa Catarina, 2017.

15 According to a civil society organization, 200 sexual orientation-based applications were submitted in the city of São Paulo from January 2013 to February 2016. 95% of them were from Africa. See V. Andrade, *Imigração e Sexualidade*, *ivi*.

16 Eurostat, *Asylum in the EU Member States*, 2018, at <http://ec.europa.eu/eurostat/documents/2995521/8754388/3-20032018-AP-EN.pdf/50c2b5a5-3e6a-4732-82d0-1caf244549e3>.

17 J. Durà Tohus, *Perspectiva Global del Asilo y Refugio en España*, in *Libertad de Circulación, Asilo y Refugio en la Unión Europea*, I. Fabado (ed.), Valencia, Tirant lo Blanch, 2013, p. 105.

18 Some of the reasons are: the image of sexual freedom associated with the country; the closeness to North Africa, a region where homophobia is widespread; the linguistic and cultural ties with applicants from former colonies, such as Colombia, Venezuela, El Salvador and Honduras.

19 According to Jaume Durà Tohus, CEAR-Valencia's coordinator, there are about 50-100 claims regarding sexual orientation and gender identity per year just in the city of Valencia. Cameroon, Gambia, Algeria, Morocco, Russia, Honduras, El Salvador



These two countries were chosen for this North-South analysis because both of them share a similar context: they were not traditional destinations for asylum seekers until some years ago, they receive similar numbers of applications currently and have been receiving claimants on the basis of sexual orientation. At the same time, Brazil and Spain are significantly distinct in terms of legislation. The Brazilian Asylum Act<sup>20</sup> is considered very progressive, but there is no explicit mention of sexual orientation as a reason for claiming asylum. On the other hand, the Spanish Asylum Act<sup>21</sup> explicitly mentions sexual orientation as an element that may be useful to identify a particular social group, but there are some restrictions regarding this ground that do not apply to other reasons of persecution.

The paper is organised as follows. The first part deals with the refugee status determination of claims based on sexual orientation in the two countries. The second section analyses (the lack of) local integration focusing on the relation between non-heterosexual asylum seekers/refugees and the LGBTI+ community in São Paulo (Brazil) and Valencia (Spain)<sup>22</sup>. Both sections are built on research carried out into two methodological stages. Firstly, a specialized bibliography on RSD and local integration was consulted<sup>23</sup>. The Brazilian and the Spanish Asylum Acts were also analysed at this stage. Secondly, ethnographic fieldwork was carried out in the city of São Paulo<sup>24</sup> and in the city of Valencia<sup>25</sup>.

## 2. Refugee Status Determination in Brazil and Spain

### 2.1. Brazil

The Brazilian Asylum Act<sup>26</sup> has been considered a very progressive law<sup>27</sup>. At least three reasons may be highlighted for this consideration. First, apart from the five 1951 Geneva Convention grounds for granting asylum<sup>28</sup> – i.e. well-founded fear of being persecuted due to race, religion, nationality, membership of a particular social group or political opinion –, the Act also includes the ‘generalized and mas-

and Colombia are some of the countries of origin.

- 20 *Lei n. 9.474, 22 de Julho de 1997, Define Mecanismos para a Implementação do Estatuto dos Refugiados de 1951.*
- 21 *Ley 12/2009, de 30 de Octubre, Reguladora del Derecho de Asilo y de la Protección Subsidiaria*, in BOE, n. 263 of 31 October 2009.
- 22 São Paulo and Valencia are capitals of States/autonomous communities that have been receiving a large number of asylum claims in each country. Both of them have public institutions and NGOs that work for refugees’ assistance and protection, as well as traditional LGBTI+ organizations. However, the manner in which these institutions and organizations act towards non-heterosexual asylum seekers and refugees in the two cities is completely different.
- 23 Concerning RSD in Brazil, see T. Oliva, *Minorias Sexuais*, *ivi*; L. Jubilut, *ivi*; R. Leão, *O Reconhecimento dos Refugiados pelo Brasil – Decisões Comentadas do CONARE*, UNHCR Brasil e CONARE, 2007. Regarding the same issue in Spain, see J. Díaz Lafuente, *ivi*; Spanish Ombudsman, *A Study of Asylum in Spain. International Protection and Reception System Resources*, Madrid, 2016. In the Spanish context it was also possible to access three important reports: CEAR-Euskadi, *Persecución por Motivos de Género y Derecho de Asilo: Del Contexto Global al Compromiso Local. El sistema de Asilo Español Frente a la Violación de los Derechos Humanos de las Mujeres y de Lesbianas, Gays, Bisexuales y Transexuales*, Bilbao, 2009; S. Jansen, T. Spijkerboer, *Fleeing Homophobia. ivi*; Comisión Española de Ayuda al Refugiado (CEAR), *Informe 2017: Las Personas Refugiadas en España y Europa*, 2017.
- 24 This fieldwork was conducted from January to May 2016 for this author’s masters thesis. During this period, some non-heterosexual asylum seekers and refugees were met: a lesbian refugee from Cameroon and six gay/bisexual male asylum seekers from Nigeria, Sierra Leone, Democratic Republic of Congo, Ghana and Syria. In São Paulo, apart from these asylum seekers/refugees, NGO’s social workers and lawyers were also interviewed as well as the UNHCR representative in Brazil and the president of the CONARE, i.e. the government agency responsible for the recognition of refugee status in Brazil. Interviews also included members from two LGBTI+ organizations.
- 25 This fieldwork was carried out in Valencia during June 2016 and June 2017. Interviewees include Professor Rosario García Mahamut, who was the director-general of domestic policy of the Minister of Interior in 2009 when the Spanish Asylum Act was written; two lesbian asylum seekers from Russia (although informally); the coordinator of the NGO CEAR-Valencia (*Comisión Española de Ayuda al Refugiado del País Valenciano*) and one of the coordinators of LAMBDA, a LGBTI+ organization.
- 26 *Lei n. 9.474, ivi.*
- 27 L. Jubilut, *ivi*; R. Leão, *ivi*; J. Moreira, *ivi*.
- 28 The 1951 Geneva Convention was ratified by Brazil in 1961. See *Decreto n° 50.215, 28 de Janeiro de 1961, Promulga a Convenção Relativa ao Estatuto dos Refugiados, Concluída em Genebra, em 28 de Julho de 1951.*

sive violation of human rights' ground from the Cartagena Declaration<sup>29</sup>. Second, the law permits asylum seekers to work legally in the country even before being granted refugee status, with the consequence that all asylum seekers are allowed to work. Third, despite being a government agency, the National Committee for Refugees (CONARE) was created by the Act as a 'tripartite structure': in addition to the Government, civil society and the UNHCR being represented<sup>30</sup>.

In order to apply for international protection, the asylum seeker must go firstly to the Federal Police and complete an application form. After some months or, even, years<sup>31</sup>, the claimant is interviewed by a CONARE's official. This is the crucial moment in the process, when the asylum seeker tells his/her story and the official decides about the credibility of the narrative. When the official's report on the applicant is written, the CONARE's plenary body determines whether or not the refugee status is granted. Finally, after CONARE's decision, if the claimant was denied refugee status, he/she can make an appeal to the Minister of Justice.

There is no explicit mention of sexual orientation in the Brazilian Asylum Act, nor is the 'particular social group' defined. However, for CONARE sexual minorities may be understood as members of a particular social group if they were persecuted or had the well-founded fear of being persecuted because of their sexualities in their countries of origin.

The first time asylum was granted due to sexual orientation in Brazil dates back to 2002 for a gay Colombian couple<sup>32</sup>. They lived in a region dominated by a paramilitary group that killed homosexuals<sup>33</sup> and, because they were a gay couple, that group started to threaten them. This favourable decision to grant asylum showed two relevant considerations concerning CONARE's policy<sup>34</sup>. First, to grant asylum, CONARE does not deem it necessary that the country of origin criminalises same-sex relations, in light of the fact that in Colombia this criminalisation did not exist. Second, it accepts that sexual orientation-based applicants can be persecuted by non-State actors, taking into account that the Colombian couple were persecuted by a paramilitary group.

According to the former CONARE's President, two aspects are fundamental for RSD in Brazil: firstly, the situation in the country of origin; and, secondly, the credibility assessment on the claimant's story concerning both the situation in his/her country of origin and his/her sexuality<sup>35</sup>. On the one hand, in order to access legal and social Country of Origin Information (COI), CONARE's officials are used to carrying out research which includes, as relevant sources, reports from United Nations agencies and civil society organizations. The fact that UNHCR is represented within CONARE, as in other countries<sup>36</sup>, is useful when there are no available documents/reports on a specific country. On the other hand, it seems that CONARE does not have a clear policy regarding how to check the claimants' well-founded fear of being persecuted in the country of origin.

Although CONARE commonly requires that the asylum seeker has suffered a persecution to be granted refugee status<sup>37</sup>, some claimants who did not suffer past persecutions were nevertheless granted

29 *Cartagena Declaration on Refugees, Cartagena das Índias*, 22 November 1984, at [www.oas.org/dil/1984\\_cartagena\\_declaration\\_on\\_refugees.pdf](http://www.oas.org/dil/1984_cartagena_declaration_on_refugees.pdf). This Declaration is the result of the 'Colloquium on the International Protection of Refugees in Central America, Mexico and Panama', which was held in Colombia in 1984. It was adopted on the basis of the need to re-evaluate the international protection of refugees in the face of the serious crisis in Central America.

30 CONARE is composed by five Ministries' representatives (Justice – who is the president –, Foreign Affairs, Labour, Health and Education), a Federal Police's representative and a representative from a civil society organization that works for refugees' assistance and protection. These seven actors vote for the claim's grant or refusal. UNHCR is also always a plenary member and has the right to voice, but not to vote.

31 Currently the average time is around 2 years. Information available at <https://g1.globo.com/mundo/noticia/brasil-tem-86-mil-estrangeiros-aguardando-resposta-sobre-refugio-e-14-funcionarios-para-avaliar-pedidos.ghtml>.

32 R. Leão, *ivi*. This is the first case that is known because R. Leão, who worked at CONARE, reported it in his book. It is possible that refugee status was granted on the grounds of sexual orientation even before, but it is not reported due to the lack of official data published about these claims in Brazil.

33 See Immigration and Refugee Board of Canada, *Colombia: Treatment of Sexual Minorities; Availability of State Protection and Support Services (2012-June 2015)*, 24 June 2015, at [www.refworld.org/docid/55924c3a4.html](http://www.refworld.org/docid/55924c3a4.html).

34 T. Oliva, *ivi*.

35 V. Andrade, *Imigração e Sexualidade*, *ivi*, pp. 201-203.

36 See, for example, the case of Italy where the UNHCR is represented in *Commissioni Territoriali*, i.e. the adjudicator body for refugee status in Italy. More info available at [www.interno.gov.it/it/ministero/dipartimenti/dipartimento-liberta-civili-e-immigrazione/commissione-nazionale-diritto-asilo](http://www.interno.gov.it/it/ministero/dipartimenti/dipartimento-liberta-civili-e-immigrazione/commissione-nazionale-diritto-asilo).

37 According to one of the lawyers interviewed (São Paulo, 6 May 2016), this happens when the country of origin does not criminalise same-sex relations. In the cases where there is criminalisation, if the applicant is believed to be gay, lesbian or bisexual,

asylum. For example, during my fieldwork research, one of the reported cases was related to a man who had never expressed his non-heterosexual orientation in his country of origin because he was afraid of the possible consequences due to the social discrimination and persecution towards gays, lesbians and bisexuals. Therefore, he was not persecuted, but he had the fear of being persecuted. CONARE found that his fear was well-founded and he was granted asylum<sup>38</sup>.

It is important to note that, according to the 1951 Geneva Convention and to the Brazilian Asylum Act, it is not necessary that the well-founded fear of being persecuted is based on a past persecution. The purpose of refugee status is to protect persons who have the well-founded fear of being persecuted, not having necessarily experienced a previous persecution<sup>39</sup>. For instance, if a non-heterosexual person lives in a country where same-sex relations are not socially accepted and where gay/lesbian/bisexual people are discriminated against (if not killed) without the possibility to enjoy State's protection, this person does not need to wait until he/she is directly and effectively persecuted to prove the well-founded fear of being persecuted. The context itself is sufficient to prove this well-founded fear.

Having said that, it seems that CONARE's policy regarding how to check the well-founded fear is not clear and that it varies over time depending on the Committee's officials.

In relation to the credibility assessment on the claimant's narrative, in Brazil it is necessary that the applicant's story about what happened or could have happened in his/her country of origin is coherent with the relevant COI. In addition, and more importantly, the narrative of his/her sexual orientation needs to be considered credible by the CONARE's official, that is, the claimant has to be believed as truly being – or being possibly perceived as – a non-heterosexual person.

CONARE's policy concerning credibility shows three good practices. First, there is no indication that the discretion requirement<sup>40</sup> has ever been used as a justification for denying refugee status<sup>41</sup>. Second, the fact that the claimant had been in a heterosexual marriage or has children is not considered evidence *per se* that he/she is not a 'true' homosexual. For instance, in 2015 a lesbian asylum seeker from Cameroon and her daughter were granted refugee status despite the fact that this woman married a friend and had a baby in her country of origin as an attempt to stop being threatened due to her sexual orientation. Third, no proofs or tests concerning sexual orientation, such as medical examinations or witness statements, are required<sup>42</sup>. The applicant's sexual orientation is based on self-identification<sup>43</sup>.

However, the criteria used for credibility assessments are not always clear. As in other countries, the issue "truth vs. lie" is a constant worry in Brazil, especially as far as claims based on sexual orientation are concerned. Some of CONARE's officials and other people who work on RSD consider these types of claims to be 'easier' because of the difficulty regarding how 'to prove' the applicant's sexual orientation. The idea is that some asylum seekers would take advantage of it, lying about their own sexualities to be granted asylum<sup>44</sup>. Nevertheless, it is not easy 'to prove' persecution based on religion or political opinion as well, and for these two grounds there is no assumption, at least not on the same intensity, that the asylum seekers will lie.

---

the criminalization itself would be enough for finding a well-founded fear of persecution.

- 38 The lawyer that reported the case during fieldwork (São Paulo, 6 May 2016) did not provide the claimant's nationality.
- 39 UNHCR states: 'Past persecution is not a prerequisite to refugee status and in fact, the well-foundedness of the fear of persecution is to be based on the assessment of the predicament that the applicant would have to face if returned to the country of origin'. UNHCR, *Guidelines on International Protection no. 9. Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, 2012, p. 6.
- 40 It refers to the consideration that if the applicant conceals his/her sexual orientation in the country of origin, he/she will not be discriminated against or persecuted.
- 41 T. Oliva, *ivi*, p. 24.
- 42 If the asylum seeker has any document that may be used in his/her favour – for instance, a newspaper of his/her country of origin in which his/her name appears as a wanted person to be arrested because of his/her sexual orientation; proof of the persecution he/she faced, like emails or messages on the mobile; any kind of document that shows he/she has been living in a same-sex relationship –, he/she may show it during the CONARE's interview. Nevertheless, it is not a requirement to be granted asylum. If there is no document/proof, but the narrative is considered credible, the asylum seeker may be granted refugee status.
- 43 Information provided during interviews with the former CONARE President (São Paulo, 7 March 2016) and two lawyers from civil society who are experts on Human Rights and work for refugees in Brazil (São Paulo, 6 and 11 May 2016). For the transcripts of the interviews, see V. Andrade, *Imigração e Sexualidade*, *ivi*, pp. 202-206.
- 44 Information provided by a lawyer from civil society who works for refugees in Brazil (11 May 2016). For the transcript of the interview, see V. Andrade, *ivi*, p. 210.



Credibility assessment may sometimes rely on stereotypes and Western conceptions. According to two of the lawyers I have interviewed<sup>45</sup>, a CONARE official asked a gay claimant if he was 'top' or 'bottom' when having sex with other men. The applicant answered he preferred to be 'top' (i.e. to penetrate instead of being penetrated during anal sex). Taking this information into account, the official wrote his report stating that refugee status should be denied in this case, because the asylum seeker was not a 'true' gay. This report was contested, the official was removed from his position at CONARE and the applicant was eventually granted asylum.

For this former official, there was an association between male homosexuality and femininity, that is, just men who are sexually penetrated (position associated to femininity) are 'true' gays. It shows how stereotypical perceptions negatively influence the decision on refugee status. Furthermore, it is totally inadequate to pose questions about sexual practices during a RSD interview 'to prove' whether the applicant is gay or not. As suggested by UNHCR, 'detailed questions about the applicant's sex life should be avoided. It is not an effective method of ascertaining the well-foundedness of the applicant's fear of persecution on account of his or her sexual orientation and/or gender identity'<sup>46</sup>. Moreover, it is even possible that the claimant identifies himself/herself as gay/lesbian/bisexual but had not expressed his/her sexual orientation in the country of origin due to the fear of being persecuted.

Summing up, even if it does not include any explicit mention of sexual orientation, the Brazilian Asylum Act has been interpreted in a way that non-heterosexual persons may be identified as members of a particular social group and be granted asylum if they were persecuted or had the well-founded fear of being persecuted because of their sexualities in their countries of origin.

## 2.2. Spain

The current Spanish Asylum Act<sup>47</sup> was adopted in 2009. Apart from the five 1951 Geneva Convention grounds for granting international protection, the Act explicitly mentions gender and sexual orientation as relevant for identifying particular social groups, which is considered an important normative advancement<sup>48</sup>. In fact, this new law was adopted to fit the European Union Council Directive 2004/83/EC, which declares that a particular social group might include a group based on a common characteristic of sexual orientation<sup>49</sup>. However, even before the approval of the Asylum Act, the Spanish Courts had already granted refugee status due to sexual orientation<sup>50</sup>. Then, the explicit mention of sexual orientation in the law served to guarantee the interpretation that already existed in some Court's decisions.

Nevertheless, there are some restrictions regarding the sexual orientation ground in the law that do not apply to the 'classical' reasons. Sexual orientation *per se* is not enough for claiming asylum in Spain.

The condition to consider sexual orientation as a particular social group is the 'prevailing circumstances in the country of origin' (Article 7.1e)<sup>51</sup>. This concept is indeterminate<sup>52</sup>. There are indeed no objective parameters to analyse the 'prevailing circumstances'<sup>53</sup>. At least, two consequences may be derived from this restriction. First, this condition creates a situation of judicial insecurity for sexuality-based claimants because the lack of COI<sup>54</sup> may be used to refuse applications systematically without

45 These interviews took place in São Paulo, on 1 April 2016 and on 11 May 2016. For the transcripts of the interviews, see V. Andrade, *Imigração e Sexualidade*, *ivi*, pp. 212-213.

46 UNHCR, *Guidelines on International Protection no. 9*, *ivi*, pp. 16-17.

47 Ley 12/2009, de 30 de Octubre 2009, *ivi*.

48 J. Díaz Lafuente, *ivi*, p. 224.

49 Council Directive 2004/83/EC, of 29 April 2004, on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons who otherwise Need International Protection and the Content of the Protection Granted, Article 10.1(d), OJ L 304, 30 September 2004, pp. 12-23.

50 J. Díaz Lafuente, *Estudio de la Doctrina Jurisprudencial Española sobre la Protección Internacional por Motivos de Orientación Sexual e Identidad de Género*, in *Libertad de Circulación, Asilo y Refugio en la Unión Europea*, *ivi*.

51 Ley 12/2009, de 30 de Octubre 2009, *ivi*. It follows the Directive 2004/83/EC, *ivi*, which states that 'depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sexual orientation': see Art. 10.1(d).

52 CEAR-Euskadi, *ivi*, p. 110.

53 J. Díaz Lafuente, *Asilo y Refugio*, *ivi*, p. 248.

54 In Spain, a lack of information is commonly taken by the asylum authorities to mean that there is no persecution. See S. Jansen, T. Spijkerboer, *Fleeing Homophobia*, *ivi*, p. 72.

analysing each case individually<sup>55</sup>. Second, it operates in a discriminatory way in relation to the other reasons of persecution (race, religion, nationality and political opinion) because 'prevailing circumstances in the country of origin' apply only to sexual orientation<sup>56</sup>.

Moreover, the Spanish Asylum Act states that 'in no case can sexual orientation be understood as the performance of conducts typified as an offense in the Spanish legal system' (Article 7.1e)<sup>57</sup>. This restriction is both unnecessary and discriminatory<sup>58</sup>. It is not necessary because Article 8.2b), where the exclusion causes are declared, already states that this restriction applies to all the grounds for claiming asylum. In addition, the consensual acts between same-sex adults are not considered a crime in Spain. It is discriminatory because it implicitly links non-heterosexuality with conducts typified as crime, such as sexual assault, abuse of minors, sexual harassment, etc<sup>59</sup>.

According to José Díaz Lafuente<sup>60</sup>, these restrictions show the authorities' fear of a possible 'call effect' on non-heterosexual asylum seekers or the fear of a possible 'abuse of right' by those who are not really gay/lesbian/bisexual in light of the difficulty 'to prove' a sexual orientation or who are homosexual but are not afraid of being persecuted. What is more striking is that this fear does not exist in relation to other reasons for persecution, which are also difficult 'to prove', such as religion or political opinion.

The process of claiming asylum in the Spanish territory has two different stages<sup>61</sup>. The asylum seeker usually submits a request to police officers, who are responsible for its registration. Then, the Office of Asylum and Refuge (*Oficina de Asilo y Refugio* – OAR)<sup>62</sup> of the Ministry of Interior is called to evaluate this request through personal interviews with the applicants and to decide about its admissibility (*admisión a trámite*). After this first stage, admissible applications are examined by the Inter-Ministerial Asylum and Refugee Commission (*Comisión Interministerial de Asilo y Refugio* – CIAR), which decides to grant or to refuse international protection.

To be admitted for processing by the OAR, applications must fulfil two requirements: a positive one, based on the description of a persecution due to sexual orientation; and a negative one, based on the lack of manifest falsehood and implausibility of the claim<sup>63</sup>. According to the Spanish Supreme Court (*Tribunal Supremo*)<sup>64</sup>, proof is not required at this stage; the examination must rely on the narrative. Unless there is manifest falsehood or implausibility, applications need to be admitted for processing and go to the CIAR's analysis. However, according to CEAR-Euskadi<sup>65</sup>, some applications are not admitted at this first stage due to the lack of proof of a persecution<sup>66</sup>. If the application is not admitted for processing, the asylum seeker may appeal to Courts<sup>67</sup>.

The second stage of the Spanish asylum process is led by the CIAR, when another interview may be conducted<sup>68</sup>. This Commission is composed of representatives of each of the departments having competences on: home and foreign affairs, immigration, justice, reception, asylum seekers and equali-

55 J. Díaz Lafuente, *Asilo y Refugio*, *ivi*, p. 232; CEAR-Euskadi, *ivi*, p. 110.

56 J. Díaz Lafuente, *Asilo y Refugio*, *ivi*, p. 232; CEAR-Euskadi, *ivi*, p. 172.

57 *Ley 12/2009, de 30 de Octubre 2009*, *ivi*.

58 J. Díaz Lafuente, *Asilo y Refugio*, *ivi*, p. 232.

59 *Ibid.*, p. 289.

60 *Ibid.*, p. 248.

61 It is also possible to claim asylum in the Spanish borders and Detention Centres for Foreigners (CIE). When the application is not requested in the territory, the process is different. The processes can be consulted in *Asylum in Europe*, at [www.asylumineurope.org/reports/country/spain/regular-procedure](http://www.asylumineurope.org/reports/country/spain/regular-procedure).

62 Applications may be submitted directly to OAR as well.

63 J. Díaz Lafuente, *Asilo y Refugio*, *ivi*, p. 259.

64 Tribunal Supremo, Sala de lo Contencioso-Administrativo, Sección 5ª, Sentencia de 21 de Abril 2006 (rec. no. 2060). See P. Santolaya Machetti, A. Miguel Pérez-Moreno, *El Derecho de Asilo en la Jurisprudencia (Julio 2005-Junio 2006)*, CIBOD, 2007, p. 200.

65 CEAR-Euskadi, *ivi*, p. 132.

66 See the criticism raised by the Spanish Ombudsman, *ivi*, p. 36.

67 At this first stage, it is possible to make an administrative appeal to JCCA (*Juzgado Central Contencioso Administrativo*) or a judicial appeal to the Spanish National Court (*Audiencia Nacional*). An onward appeal may be made to the Supreme Court (*Tribunal Supremo*). At the second stage, appeals are possible to both Courts as well.

68 Second interviews are held in a very small percentage of cases: see Spanish Ombudsman, *ivi*, p. 31.

ty<sup>69</sup>. UNHCR participates, expressing its opinion, but without veto power. No civil society organization takes part. Within an average of six months, CIAR decides on the denial or granting of refugee status.

According to the Supreme Court<sup>70</sup>, in Spain two criteria are fundamental for deciding to recognize or refuse international protection: 1) the severe social context of non-protection and persecution for reasons of sexual orientation; and 2) if the individual persecution due to this reason is deemed credible or not. Hence, RSD in Spain is based on the situation in the country of origin and the credibility relating to the asylum seeker's story.

To be granted refugee status, it is necessary to fulfil three requirements concerning country of origin. Criminalisation of same-sex relations is the first one<sup>71</sup>. Jansen and Spijkerboer<sup>72</sup> state that the OAR waited until the Nicaraguan Penal Code changed to deny all applications from that country, despite the fact that the situation of non-heterosexual people in Nicaragua did not improve after the change in law. Like in other EU Member States, in Spain not only is the criminalization required, but also its enforcement. It seems nonetheless that, in some cases, refugee status may be granted to persons from non-criminalising countries if it is proved that there is a situation of severe and manifest homophobia<sup>73</sup>.

However, criminalisation and its enforcement do not seem sufficient to be granted asylum: it is necessary that the applicant had suffered a past persecution. Even if the country of origin enforces prison sentences, including the death penalty, this is not enough for satisfying the requirement of the well-founded fear of being persecuted. In fact, the applicant needs to prove the effective persecution he/she has personally suffered<sup>74</sup>. Furthermore, according to article 6.1 of the Spanish Asylum Act, the persecution acts in the country of origin must be sufficiently severe *per se* or continuous in nature to constitute a serious violation of fundamental rights<sup>75</sup>. Consequently, depending on the persecution act, it may not be considered severe enough to prove persecution based on sexual orientation (for instance, in case it was an isolated act)<sup>76</sup>.

Two main consequences emerge from this 'triple requirement'. First, as said before, the condition of a past persecution is at odds with the concept of asylum proposed by the 1951 Geneva Convention: instead of the well-founded fear of being persecuted in the country of origin, the applicant must prove that a persecution had already begun. The second consequence is that refugee status based on sexual orientation is granted basically only to activists that had survived in their countries and fled to Spain<sup>77</sup>.

According to the Spanish Asylum Act (Article 13), persecution may be perpetrated by a) the State; b) parties or organizations that control the State or a considerable part of its territory; c) non-State actors, when actors mentioned in 'a' and 'b' cannot or do not want to provide effective protection<sup>78</sup>. However, according to Jansen and Spijkerboer<sup>79</sup>, in Spain sexual orientation-based applications were refused on the grounds that the claimant should have sought protection from the State against homophobic violence by non-State actors in countries that criminalise homosexuality. Spanish authorities have also adopted a peculiar approach when the claimant's State 'did not fail' to protect the person, although all related actions were not effective:

69 Information available from *AsylumEurope*, at [www.asylumineurope.org/reports/country/spain/regular-procedure](http://www.asylumineurope.org/reports/country/spain/regular-procedure).

70 Tribunal Supremo, Sala de lo Contencioso-Administrativo, Sección 3ª, Sentencia de 21 de septiembre 2012 (rec. no. 2012/8940).

71 See, for instance, Audiencia Nacional, Sala de lo Contencioso, Sección 8ª, Sentencia de 4 de julio de 2007 (rec. no. 118/2007).

72 S. Jansen, T. Spijkerboer, *Fleeing Homophobia*, *ivi*, p. 75.

73 See Tribunal Supremo, Sala de lo Contencioso-Administrativo, Sección 3ª, Sentencia de 30 de noviembre 2005 (rec. no. 6006/2002).

74 Tribunal Supremo, Sala de lo Contencioso-Administrativo, Sección 3ª, Sentencia de 21 de septiembre 2012 (Rec. nº 2012/8941).

75 *Ley 12/2009, de 30 de Octubre 2009*, *ivi*.

76 According to Article 4 of the Spanish Asylum Act, applicants who do not fulfil all the requirements to be granted refugee status, but have the well-founded reasons to be believed that they would face a real risk of suffering severe damages if they returned to their countries, may receive subsidiary protection (severe damages are understood as death sentence; torture or inhuman or degrading treatment; and serious threats against their life or integrity by reason of indiscriminate violence). Thus, subsidiary protection may be granted to sexuality-based applicants in the cases in which there was no past persecution.

77 J. Durà Tohus, *Perspectiva Global del Asilo y Refugio en España*, in *Libertad de Circulación, Asilo y Refugio en la Unión Europea*, *ivi*, p. 107; S. Jansen, T. Spijkerboer, *Fleeing Homophobia*, *ivi*, p. 24.

78 *Ley 12/2009, de 30 de Octubre 2009*, *ivi*.

79 S. Jansen, T. Spijkerboer, *Fleeing Homophobia*, *ivi*, p. 28.



In Spain, a Georgian gay who suffered physical attacks because of his sexual orientation, was rejected by the National Court because “the attitude of the police was not totally passive towards the problems the asylum seeker submitted as a basis for his asylum claim” [*Audiencia Nacional* (National Court) 23 May 2007, rec. n° 412/2004]. The Court reached this conclusion “because on the day the asylum seeker was hit, there was police intervention. Although they did not take measures as effectively as would have been necessary”<sup>80</sup>.

Considering the weight given to the ‘prevailing circumstances in the country of origin’, COI is crucial to RSD in Spain. There are three main problems regarding this issue. First, not only is there a lack of information but this lack has been considered by authorities as an evidence of the absence of persecution in some cases<sup>81</sup>. For example, despite accepting the criminalisation of same-sex acts in the Algerian Penal Code, the Spanish National Court (*Audiencia Nacional*) stated there was not persecution because an international organization that works for LGBT rights did not have data about the situation of non-heterosexual people in the country<sup>82</sup>. Second, many times the persecution towards gays/lesbians/bisexuals is perpetrated by family and community members and there is no official data covering the extent of this violence. Furthermore, it can be really difficult to collect information about human rights violations in regions where these persecutions are not considered violations, are made invisible by State and non-state actors and where investigation on this persecutions exposes anyone to the risk of being persecuted as well<sup>83</sup>. Third, the sources usually consulted are also problematic. In fact, if we exclude the cases where sources are not even mentioned, in some Court’s decisions data were collected from the internet, while reports from official organizations were considered irrelevant<sup>84</sup>. Moreover, it seems that Courts value the COI used by the OAR much more than the COI given by asylum seekers or by NGOs supporting the cases<sup>85</sup>.

It is important also to note that the Spanish authorities used to deny refugee status based on the discretion requirement<sup>86</sup>. However, it may be assumed that, in light of the case law of the Court of Justice of the EU (CJEU), this approach is no longer adopted. In fact, in 2013 the CJEU declared that ‘an applicant for asylum cannot be expected to conceal his homosexuality in his country of origin in order to avoid persecution’<sup>87</sup>. Consequently, none of the EU Member States are allowed to use the discretion requirement anymore<sup>88</sup>.

Regarding late disclosure, i.e. when the applicant discloses his/her sexual orientation to the asylum authorities only during the asylum procedure, not at the moment of the initial application<sup>89</sup>, it has been used as an argument for declaring non-credibility and to deny refugee status<sup>90</sup>. For instance, it happened to a gay man from Cuba, who firstly relied on problems related to the Cuban dictatorship and only later explained that the real reason of his claim was the persecution he had faced in his country because of his sexual orientation<sup>91</sup>.

Concerning how to ‘prove’ sexuality, little credibility is given to the asylum seeker’s own testimony: there is a generalized assumption of abuse of right by applicants on the basis of sexual orientation,

80 *Ibid.*, p. 30.

81 *Ibid.*, p. 72.

82 Audiencia Nacional, Sala de lo Contencioso, Sentencia del 7 de noviembre de 2008 (rec. no. 1563/2007).

83 CEAR-Euskadi, *ivi*, p.110.

84 *Ibid.*, p.180.

85 S. Jansen, T. Spijkerboer, *Fleeing Homophobia*, *ivi*, p. 74.

86 J. Díaz Lafuente, *Asilo y Refugio*, *ivi* p. 293; S. Jansen, T. Spijkerboer, *Fleeing Homophobia*, *ivi*, p. 34.

87 CJEU, 7 November 2013, Joined Cases C-199/12, C-200/12 and C-201/12, X, Y and Z v Minister voor Immigratie, Integratie en Asiel.

88 However, the case *M.B. v. Spain*, decided by the European Court of Human Rights (Decision, 13 December 2016, application n. 15109/15), may indicate that Spanish authorities might still be using the discretion requirement indirectly. See ILGA-Europe, *Update from Strasbourg – M.B. v Spain Asylum Case Struck Out*, 2017.

89 It can be caused by different reasons, such as: the applicant may initially have been unaware that sexual orientation is a reason for claiming refugee status; he/she may have feelings of fear and shame; the applicant may fear that the information about his/her sexual orientation will reach people from the community who will then pass it back to family in the country of origin or people from the same community in the host country. See S. Jansen, T. Spijkerboer, *Fleeing Homophobia*, *ivi*, p. 9.

90 About late disclosure in Spain, see L. Muñoz Blanco, P. Ibáñez Díez, “Late Disclosure” in Spain, at COC Out and Proud Conference 2017, LGBTI Asylum in Europe, Amsterdam, 5-6 October 2017.

91 Tribunal Supremo, Sala de lo Contencioso-Administrativo, Sección 3ª, Sentencia de 28 de noviembre 2008 (rec. no. 5265/2005).

whereas this assumption is not applied to claimants on the grounds of other reasons<sup>92</sup>. Apart from the asylum seeker's narratives, witness statements and reports from LGBTI+ organizations 'attesting' the homo or bisexuality may be used as proof<sup>93</sup>. As I will further explore below, the LGBTI+ organization LAMBDA is responsible for drafting these reports in Valencia. Reports include both COI and the applicant's sexual identity. In order to attest this identity, the organization asks the asylum seekers to take part in different activities, such as regular meetings and the annual Pride Parade<sup>94</sup>.

On one hand, this kind of report is interesting because it may really help in the process<sup>95</sup>. On the other hand, asking applicants to participate in such activities is almost equal to asking them to become activists, to show their sexualities publicly. They need to be 'out and proud' to be granted refugee status, in other words, they must conform to homonormative notions that are constructed around a Western model of sexuality<sup>96</sup>.

Summing up, the Spanish Asylum Act shows an important normative advancement given that sexual orientation is explicitly mentioned as a particular social group. However, the reference to 'the prevailing circumstances in the country of origin' creates a situation of judicial insecurity for sexuality-based claimants, especially because COI is a problematic aspect of RSD in Spain. The EU law has certainly influenced Spanish law. On a positive note, since Spanish authorities used to deny refugee status based on the discretion requirement, they are prevented from using the same argument following the identification of discretion as a serious human rights violation by the CJEU. On a negative note, in light of the same Court's reasoning, the enforcement of criminalisation seems still to be required.

Having this in mind and considering the role played in this context by LGBTI+ organizations, let us now explore local integration in both Spain and Brazil as far as non-heterosexual claimants are concerned.

### 3. Local integration: strategies in Brazil and Spain

Refugee status determination and local integration should not be seen as two totally different aspects concerning asylum seekers and refugees in the host country. Crisp<sup>97</sup>, for instance, adopts a multidimensional perspective of local integration, whose first dimension is the legal process. In his conception, RSD is part of the first stage due to the fact that applicants are granted a progressively wider range of rights, including the right to seek employment and to have access to public services. RSD and local integration are therefore two related aspects of the same process. Even the division made on this paper is meant only for analytical purposes.

In Brazil, asylum seekers and refugees benefit from some social services provided by the government at federal, state and municipal levels, such as education and health care. However, civil society organizations are responsible for the majority of activities to facilitate local integration<sup>98</sup>. According to Jubilut<sup>99</sup>, 60% of the total budget for refugee integration in the country is provided by civil society. Concerning non-heterosexual asylum seekers and refugees, there is no specific policy from the government yet. In Spain, the Asylum Act establishes a national reception and integration system<sup>100</sup>. It is composed of three phases in which the government and three NGOs are responsible for providing shelter, legal,

92 J. Díaz Lafuente, *Asilo y Refugio*, *ivi*, p. 296.

93 L. Muñoz Blanco, P. Ibáñez Díez, *ivi*, p. 25; S. Jansen, T. Spijkerboer, *Fleeing Homophobia*, *ivi*, p. 53.

94 According to LAMBDA, it is always taken into consideration whether the applicant can/want to participate in a specific activity or not. Some of them, for example, take part but ask not to be photographed because they are been sought by family or community members.

95 According to Luis Noguero, one of LAMBDA's coordinators (Valencia, 7 June 2017), there were cases in which refugee status was firstly denied, but it was eventually granted by the Courts after analysing the reports made for those claimants. See, for instance, the 'Senegalese case' reported by L. Muñoz Blanco, P. Ibáñez Díez, *ivi*, pp. 10-13.

96 N. Held, *ivi*.

97 J. Crisp, *ivi*.

98 J. Moreira, R. Baeninger, *Local Integration of Refugees in Brazil*, in *Forced Migration Review*, 2010, pp. 48-49.

99 L. Jubilut, *Enhancing Refugees' Integration: New Initiatives in Brazil*, in *Forced Migration Review*, 2010, pp. 46-47.

100 Ley 12/2009 de 30 de Octubre 2009, *ivi*, Artículo 30.

financial and psychological aid, etc<sup>101</sup>. The whole process commonly lasts 18 months, but may reach 24 months for people in situations of vulnerability. Although non-heterosexual asylum seekers are not considered vulnerable *per se*, they may be understood as being in a situation of vulnerability in some cases, for example, if they are minors, pregnant women or have suffered torture or other serious forms of psychological, physical or sexual violence (in line with relevant EU law).

### 3.1. Experiences from São Paulo, Brazil

São Paulo is the biggest city in Brazil and the capital of the São Paulo State, where 52% of the refugees live<sup>102</sup>. In the city of São Paulo there are public institutions and NGOs that work for refugees' assistance and protection, as well as governmental and non-governmental LGBTI+ organizations.

Like in Brazil as a whole, in São Paulo civil society organizations are responsible for a great number of activities regarding local integration. However, in general, these organizations do not have any specific policy towards non-heterosexual asylum seekers and refugees<sup>103</sup>.

For instance, researching in the framework of a specific NGO<sup>104</sup>, it appeared that cases based on sexual orientation were generally restricted to the lawyers: the asylum seeker revealed his/her sexual orientation to the lawyers at the moment they needed to justify the claim for international protection<sup>105</sup>. Since the NGO did not adopt strategies to make clear that the place was safe for non-heterosexual claimants (i.e. that they would not be discriminated against because they are not heterosexual), most of the time they did not feel comfortable to talk about their sexual orientations<sup>106</sup>. It is no coincidence that they did not identify themselves as such to the social workers. Interestingly, the social workers nevertheless knew about the claimants' sexual orientation, because it was written on the refugee's record. Yet, they acted as if they did not know, for example not indicating LGBTI+ shelters and organizations or what remedies exist in case of discrimination based on sexual orientation.

The consequence of this silence from both the claimants and the social workers is that no specific policies regarding assistance and local integration are developed towards non-heterosexual refugees and asylum seekers. The NGO's lawyers are focused on the legal process, not on local integration; the social workers are focused on assistance and local integration (health, education, housing, employment).

According to the report *Opening Doors: A Global Survey of NGO Attitudes Toward LGBTI Refugees and Asylum Seekers*<sup>107</sup>, this cycle of silence and invisibility is very common in many different places:

Of particular concern is the dense shroud of invisibility and silence that surrounds the realities of sexual orientation and gender identity. As the results of our survey show, many NGOs are unaware of the LGBTI refugees in their midst and many others are unaware of the need for targeted policies to help these vulnerable individuals. Few have the tools to inquire about LGBTI individuals' identities and circumstances, and a significant number espouse a "blind" approach to sexual orientation and gender identity, erroneously believing that these issues are not germane to their clients' protection. Some display deeply felt discomfort with this topic, in ways that limit their effectiveness. [...] these factors produce a cycle of silence and invisibility: LGBTI refugees perceive NGOs as unwelcoming or hostile and therefore hide their identities, and NGOs in turn believe these persons do not exist<sup>108</sup>.

What about the role of LGBTI+ organizations? Although there are governmental and civil society organizations specializing in assistance to LGBTI+ people in the city of São Paulo, their focus is on Brazilians,

101 CEAR, *ivi*.

102 CONARE, *Refúgio em Números*, *ivi*.

103 Specific policy means actions and partnerships planned taking into consideration the particularities of this public, such as the internalized homophobia, the fear of revealing the homo or bisexual orientation, the persecution possibly suffered from fellow citizens in the host society, the lack of supportive networks, etc. About this issue, see V. Andrade, *Desafios no Atendimento, Acolhida e Integração Local de Imigrantes e Refugiados/as LGBTI*, in *Cadernos OBMIGRA – Revista Migrações Internacionais*, 2016.

104 For ethical reasons, the name of the institution will be kept in anonymity.

105 It is important to note that in most of the cases the asylum seeker reveals the sexual orientation when it is the only reason for requesting international protection. In cases in which the applicant has other(s) reason(s) to justify the claim, it is not common to mention his/her sexual orientation. V. Andrade, *Imigração e Sexualidade*, *ivi*, pp. 80-82.

106 It is clear that an asylum seeker does not need to disclose his/her sexual orientation if he/she does not want to.

107 Organization for Refuge, Asylum & Migration (ORAM), *Opening Doors – A Global Survey of NGO Attitudes towards LGBTI Refugees & Asylum Seekers*, 2012.

108 *Ibid*, p. 1.



not having, generally, any contact with foreigners. Two examples may be provided from my fieldwork. The first one is related to an organization belonging to the City Hall, which provides some free services to LGBTI+ people (e.g. legal and psychological aid). When asked about refugees and asylum seekers, they confirmed that no assistance is specifically ensured to refugees on account of their sexual orientation. The second institution, which is managed by a civil society organization and organizes courses and events for LGBTI+ people, also confirmed this trend. All respondent social workers, psychologists and lawyers affirmed that they have not assisted foreigners. Considering that more than three thousand people were assisted by this organization at the time of my enquiry, it is striking that it had never assisted any foreigner. Hence, LGBTI+ organizations in São Paulo do not seem aware of non-heterosexual asylum seekers and refugees (at least yet).

This proves a trend. In the city of São Paulo there are policies towards (heterosexual) refugees and policies towards (Brazilian) LGBTI+ people, but there are no consolidated actions towards non-heterosexual refugees. This leads to a situation of two parallel policies that do not intersect<sup>109</sup>. However, not only is it necessary to intersect these two parallel policies, but also to establish partnerships among NGOs that work for refugees' assistance and LGBTI+ organizations:

Coalitions among NGOs are key to capacity building and strengthening services, especially where the target client population overlaps with a variety of different communities. Other organizations, particularly those that are LGBTI-focused, can help meet the needs of LGBTI clients. They may have access to the local LGBTI network and can provide advice on finding health services, non-discriminatory employment, and LGBTI-safe neighborhoods. Alliances can thus effect greater change in the lives of refugees they assist<sup>110</sup>.

It is no coincidence that all the asylum seekers/refugees I interviewed during my fieldwork were not in touch with the local LGBTI+ community in São Paulo. Most of them did not even know about its existence. They fled their countries of origin because of the laws that criminalise their affective desires and sexual practices, because of the discrimination and persecution they suffered from society and they also fled from their own families. In São Paulo, the fear of being persecuted/discriminated against still exists given that they have to deal with their heterosexual fellow citizens.

The cases of Èrika<sup>111</sup>, Phillipe<sup>112</sup> and Enzi<sup>113</sup> are explanatory. In the place where she lives with her little daughter, nobody knows that she is lesbian. Many heterosexual people from her country also live there and she is afraid of the possible consequences if they know about her sexual orientation. In the place where Phillipe lives with his boyfriend and his little daughter, the neighbours do not know they are a gay couple: Phillipe tells everybody that his boyfriend is his younger brother. Despite the fact that the three live together, he does not want his daughter to know about his relationship with another man. Enzi has never explained to his co-workers the reason he claimed asylum in Brazil is his sexual orientation. At the Church he attends, nobody knows he is gay.

The city of São Paulo provides a better environment for these non-heterosexual asylum seekers and refugees when compared to their country of origin. However, due to the fear of being persecuted or discriminated against, non-heterosexual refugees and asylum seekers do not reveal their sexualities to other refugees and asylums seekers. This also prevents the creation of supportive networks among non-heterosexual refugees<sup>114</sup>.

All of the above suggests that effective local integration is still a problematic issue for non-heterosexual asylum seekers and refugees in one of the main Brazilian cities. In this context, it seems to be 'safer' to live in the closet, through the logic of silence and invisibility<sup>115</sup>.

109 V. Andrade, *Imigração e Sexualidade*, *ivi*, p. 183.

110 ORAM, *ivi*, p. 27.

111 Èrika is a 31-35 year-old lesbian refugee from Cameroon. All the names are fictitious.

112 Phillipe is a 31-35 year-old bisexual asylum seeker from Democratic Republic of Congo.

113 Enzi is a 31-35 year-old gay asylum seeker from Nigeria.

114 None of the people this author have interviewed knows one another, for example.

115 Currently, there is just one lesbian refugee in São Paulo (the only one in Brazil as well) who talks openly about her sexual orientation and is an activist. She is from Mozambique. See info at <http://migramundo.com/acnur-no-brasil-lanca-cartilha-sobre-direitos-de-refugiados-e-solicitantes-de-refugio-lgbti/>.

### 3.2. Accounts from Valencia, Spain

Valencia is the third largest city in Spain and the capital of the autonomous community of Valencia, the fourth region in number of asylum claims in the Spanish territory<sup>116</sup>. In the city of Valencia there are different organizations that work for refugees' assistance and protection, such as the NGO CEAR-Valencia, and LGBTI+ organizations, such as LAMBDA. The way these two organizations work with people who claim asylum on the grounds of sexual orientation is noteworthy.

CEAR, the Spanish Commission for Refugee Aid, is a non-governmental organization founded in 1979 whose main purpose is the protection of the right to asylum and includes in its staff lawyers, social workers and psychologists to assist refugees and asylum seekers<sup>117</sup>. According to Jaume Durà Tohus, CEAR-Valencia's coordinator, non-heterosexual asylum seekers are informed about LGBTI+ organizations, such as LAMBDA, from the first possible moment and encouraged to contact them. The purpose is to facilitate the establishment of supportive networks for asylum seekers and refugees, a policy that is not only limited to non-heterosexual claimants<sup>118</sup>. So, for example, when a gay asylum seeker from Côte d'Ivoire visited the CEAR-Valencia's office, one of the coordinator's first actions was to contact LAMBDA in order to discuss his specific case<sup>119</sup>. As confirmed by Jaume Durà Tohus, CEAR-Valencia values these partnerships with other organizations because they strengthen its services, as proposed at international level<sup>120</sup>. This action goes hand in hand with awareness campaigns<sup>121</sup> and collection of specific data<sup>122</sup>.

LAMBDA, a non-governmental LGBTI+ organization founded in Valencia in 1986 whose main purpose is to fight against legal discrimination and social marginalization towards sexual minorities, offers more specific actions<sup>123</sup>. According to Luis Noguero<sup>124</sup>, one of the coordinators, there are four main actions concerning non-heterosexual asylum seekers and refugees, which are facilitated by the collaboration with refugee-focused organizations, such as CEAR-Valencia, Red Cross and the governmental organization Centre for Refugee Aid (*Centro de Ayuda al Refugiado* – CAR). First, LAMBDA organizes courses/lectures at these partners' offices about LGBTI+ issues (adequate language, the particularities of non-heterosexual asylum seekers, etc.). It is also common that the partners offer lectures at LAMBDA's office about asylum issues (CEAR-Valencia, for instance, did it more than once). Second, when asylum seekers visit LAMBDA, they are invited to participate in one of its groups<sup>125</sup>. The aim is to provide a space where non-heterosexual asylum seekers can find supportive networks, where they may know people who have similar experiences and sexualities, may feel safe and welcomed, as well as make friends and share their experiences. Third, LAMBDA promotes awareness campaigns in this field. For example, it is usual that these asylum seekers and refugees participate as a group at the Pride Parade, giving visibility to their stories and claiming for their rights. Fourth, and most important from a legal point of view, this organisation provides legal aid, which also includes the drafting of reports that

116 According to Gobierno de España, regarding the Spanish territory, the community of Madrid is the region that receives the greatest number of asylum seekers (5,240 in 2016), followed by Catalonia (1,834 in 2016), Andalusia (1,784 in 2016) and Valencia (1,367 in 2016). Gobierno de España, *Asilo en cifras 2016*, Madrid, Ministerio del Interior – Secretaría General Técnica, 2017.

117 For more information, see [www.cear.es](http://www.cear.es).

118 The NGO always informs the applicants about partners or other organizations which may be of their interest. For example, when an asylum seeker from a specific religion arrives at CEAR, the staff indicates the places (churches, in this case) where it is possible to meet other people from the same religion.

119 It happened on 9 June 2017 when the author visited CEAR-Valencia's office and interviewed its coordinator, Jaume Durà Tohus.

120 ORAM, *ivi*, p. 27.

121 For example, in June 2016 CEAR-Valencia invited two lesbian asylum seekers from Russia to tell their stories on the annual report launch. They reported that '*[W]e are freer here and we feel safer as well. We feel welcomed by people who assist us and it makes us want to live*'. They also said they were planning to get married in Spain.

122 On its annual reports of 2015 and 2016 there were sections about this issue. See E. Galán, *Amar con libertad puede costar la vida*, 2015, at [www.cear.es/wp-content/uploads/2015/06/Informe-2015-de-CEAR2.pdf](http://www.cear.es/wp-content/uploads/2015/06/Informe-2015-de-CEAR2.pdf), and J. Díaz Lafuente, *Huir para amar: el derecho de asilo por motivos de orientación sexual e identidad de género*, 2016, at [www.cear.es/wp-content/uploads/2016/06/Informe\\_CEAR\\_2016.pdf](http://www.cear.es/wp-content/uploads/2016/06/Informe_CEAR_2016.pdf).

123 For more information, see the website: <https://lambdavalencia.org/es/>.

124 The interview took place on 7 June 2017.

125 The majority of them takes part in the Human Rights Group (in June 2017 there were between 35 and 40 people in this group), but they can choose any of the other ones (Education, Culture, Lesbian Women Group, Youth Group, etc.).



'attest' the asylum seekers' homo or bisexuality. These are used as proof during the refugee status determination process. That is why it is important that the sexual orientation-based applicants participate in the activities organized by LAMBDA.

As discussed above, on one hand these reports are interesting because they may be crucial during the process to grant refugee status and because the asylum seekers are establishing supportive networks during these activities (what is important not only for their local integration, but also for their mental health); on the other hand, the drafting of these kind of reports may require that asylum seekers are 'out and proud', thus conforming themselves to a Western model of homosexuality. To address this dilemma, significantly, LAMBDA seems to take into serious consideration whether the applicant can/ wants to participate in any specific activity or not.

As a result, the fieldwork carried out in the city of Valencia shows that refugee-focused institutions and LGBTI+ organizations work together and elaborate specific policies towards non-heterosexual asylum seekers and refugees. Supportive networks are available to asylum seekers and may be also established by and among them. That is the why, in light also of non-heterosexual asylum seekers and refugees' participation in the local LGBTI+ community, a more effective local integration was found in Spain than in Brazil.

## 4. Conclusion

This paper was a first attempt to approach asylum based on sexual orientation in a North-South perspective, analysing RSD and local integration in Brazil and Spain.

Both countries are not, or were not until very recently, considered traditional 'countries of asylum' because of the low number of claims, but asylum applications have been increasing in Brazil and Spain in recent years. Although official statistical data about sexual orientation-based claims is not published, they are also increasing in these two States according to NGOs. A trend of a different kind has also emerged. In both countries authorities' fear of a possible 'abuse of right' by those who are not really gay/ lesbian/bisexual is palpable, as well as the fear of a possible 'call effect' on non-heterosexual asylum seekers if these claims are accepted.

A few differences may be recalled. The Brazilian Asylum Act is considered progressive by different scholars. Nevertheless, there is no explicit mention of sexual orientation. The government has been interpreting that gays/lesbians/bisexuals may be understood as members of a particular social group, but this interpretation is not expressly guaranteed in the law. On the other hand, the Spanish Asylum Act explicitly mentions sexual orientation as a relevant element for the identification of a particular social group. At the same time, it refers to the 'prevailing circumstances in the country of origin', an indeterminate concept that creates a situation of judicial insecurity for sexuality-based claimants.

For Brazilian and Spanish authorities the two fundamental criteria taken into consideration to grant or deny refugee status are the situation in the country of origin and the credibility assessment on the claimant's narrative. In Brazil the criminalization of same-sex relations in the country of origin is not a requirement for granting asylum to non-heterosexual applicants, while in Spain not only is required the criminalization, but also its enforcement.

Moreover, concerning credibility assessment, it seems that while in Brazil the fact that the claimant has been in a heterosexual marriage or has children is not considered *per se* evidence that he/ she is not a 'true' homosexual, in Spain the authorities have been denying refugee status relying on the late disclosure argument. Interestingly, Spanish authorities seem to be used to giving weight to reports from LGBTI+ organizations 'attesting' the homo or bisexuality. Nonetheless, despite the fact that Brazil shows good practices, the criteria used for credibility assessment are not always clear and may sometimes rely on stereotypes and Western conceptions.

In relation to local integration, it is worth remembering that this is a controversial concept to which more than one meaning is associated. Despite its lack of clarity, different authors agree that it must be understood as a two-way process involving not only the asylum seekers and refugees, but also the receiving society. In this sense, this paper focused on the relation between non-heterosexual asylum seekers/ refugees and the local LGBTI+ community in two specific realities. It is important to note that none of the countries seem to have specific national policies towards non-heterosexual asylum seekers.

In the city of São Paulo, the LGBTI+ organizations are not aware of non-heterosexual asylum seekers yet and the refugee-serving NGOs do not have specific policies regarding assistance and local integration towards them. The public policies in the city are dedicated to heterosexual refugees or to Brazilian LGBTI+ people. No consolidated actions towards non-heterosexual refugees are available. Sexuality-based applicants seem afraid of revealing their sexual orientation to other immigrants and,

consequently, being discriminated against and persecuted. Thus, local integration seems far from being effective in the city of São Paulo for non-heterosexual refugees: they continue to live through the logic of silence and invisibility. On the other hand, the city of Valencia shows a good example of local integration for these people. Partnerships among the NGOs that work for refugees' assistance and protection and the LGBTI+ organizations play a central role in this context and facilitate the participation of non-heterosexual asylum seekers to their activities and the consolidation of supportive networks. While this entails a risk to pressure these asylum seekers to come out, to be proud of their homo or bisexuality in order to be granted refugee status and to be integrated locally, the cooperation among civil society organizations certainly amounts to a good practice that can be replicated in other countries.

To conclude, through the analysis carried out in this paper, a general trend may be outlined. Brazil shows good practices concerning RSD while Spain, and Valencia specifically, shows good practices in local integration of non-heterosexual asylum seekers. Perhaps, it is time for a North-South global exchange of good practices as far as asylum claims based on sexual orientation are concerned.

GenIUS

Registrazione presso il Tribunale di Bologna del 30/4/2014 n. Rgvv 2023 n. 4089/14 cron.

Codice ISSN: 2384-9495

*genius@articolo29.it*